

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA**

Philip Wong, Frederic Chaussy, and Leslie Marie Shearn, individually, on behalf of all others similarly-situated, and on behalf of the general public,  
Plaintiffs,

v.

HSBC Mortgage Corporation (USA); HSBC Bank USA, N.A.; and DOES 1-50, inclusive,  
Defendants.

**Case No. 3:07-CV-2446 MMC**

**NOTICE OF COLLECTIVE ACTION**

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**TO: ALL PRESENT AND FORMER HSBC MORTGAGE CORP. (USA) RETAIL MORTGAGE LENDING CONSULTANTS, SENIOR RETAIL MORTGAGE LENDING CONSULTANTS, AND PREMIER MORTGAGE SALES OFFICERS (“LOAN OFFICERS”) WHO WORKED FOR HSBC MORTGAGE CORP. (USA), (“HMCU”) FROM MAY 7, 2004 TO THE PRESENT.**

**RE: FAIR LABOR STANDARDS ACT LAWSUIT FILED AGAINST HMCU AND HSBC BANK USA, N.A. (“HBUS”)**

**INTRODUCTION**

The purpose of this Notice is to inform you of a collective action lawsuit brought against HMCU and HBUS, to advise you of how your rights may be affected by this action, and to instruct you on the procedure to make a claim if you choose to do so.

**DESCRIPTION OF THE ACTION**

On May 7, 2007, an action was filed against Defendants HMCU and HBUS on behalf of the named Plaintiffs and all other similarly-situated individuals who worked as Loan Officers or Sales Assistants<sup>1</sup> for HMCU during the past three years. Plaintiffs claim that HMCU and/or HBUS misclassified them as exempt from overtime. Specifically, the action alleges that these individuals are owed overtime pay under the federal Fair Labor Standards Act (“FLSA”), 29

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<sup>1</sup> Sales Assistants are not part of the present notice.

U.S.C. § 207, for hours worked in excess of forty (40) per week. Plaintiffs also seek an additional amount as liquidated damages, as well as attorneys' fees and costs. This litigation is currently in the early pretrial stage.

Generally, the overtime provisions of the FLSA require that, for all hours over forty hours per week that an employee works, the employer must compensate the employee at the rate of one and one-half times his or her regular hourly rate, unless that employee is properly classified as "exempt" from the overtime provisions of the FLSA. The Plaintiffs in this lawsuit claim that during one or more weeks of their employment with HMCU, they worked in excess of forty hours, but were not paid overtime at the rate of one and one-half times their hourly rate for the hours they worked in excess of forty.

HMCU and HBUS deny Plaintiffs' allegations in their entirety. Specifically, HMCU and HBUS assert that HMCU's current and former Loan Officers—including Plaintiffs and the class of employees Plaintiffs seek to represent—were properly classified as exempt from the receipt of overtime wages because these current and former employees are, and at all times were, primarily performing the work of overtime-exempt employees. HMCU also contends that it properly paid all of its current and former Loan Officers.

#### **PERSONS ELIGIBLE TO RECEIVE THIS NOTICE**

The named Plaintiffs seek to sue on behalf of themselves and also on behalf of other employees with whom they are similarly-situated. Those individuals that Plaintiffs allege are similarly-situated are current and former Loan Officers employed by HMCU anywhere in the United States from May 7, 2004 to the present.

This notification is only for the purpose of determining the identity of those persons who wish to be involved in this case and has no other purpose. Your right to participate in this lawsuit may depend on a later decision by the United States District Court that you and the representative Plaintiffs are actually "similarly-situated."

**YOUR RIGHT TO PARTICIPATE IN THIS LAWSUIT**

If you are or were a Loan Officer at HMCU during the previous three years, you may have a right to participate in this lawsuit. Enclosed you will find a document entitled "Plaintiff Consent Form and Declaration." If you choose to join this lawsuit, and thus participate in any recovery that may result from this lawsuit, assuming the Court determines that you are similarly-situated to the named Plaintiffs, it is extremely important that you read, sign and return the Consent Form and Declaration by mail to Plaintiffs' counsel at the following address:

Nichols Kaster & Anderson, PLLP  
Attn. Paul Lukas  
4600 IDS Center  
80 S. 8th Street  
Minneapolis, MN 55402  
Toll-Free Telephone: (877) 448-0492  
Facsimile: (612) 215-6870

**The "Plaintiff Consent Form and Declaration" must be postmarked by [60 days after new notice is mailed], 2008.**

**EFFECT OF JOINING OR NOT JOINING THIS LAWSUIT**

If you choose to join this action, you and HMCU and HBUS will be bound by any ruling, judgment, or award, whether favorable or unfavorable. You will also be bound by, and will share in, any settlement that may be reached on behalf of the class. In addition, Nichols Kaster & Anderson will seek to be compensated for their efforts in litigating this case, at least 1/3 of all proceeds, and up to a combined 40% of all recovery, which will proportionately reduce the award that each class member would receive.

You should also understand that if you join the lawsuit, then you may, but will not necessarily, be required to provide documents to HMCU's and HBUS' lawyers and/or attend a deposition and answer HMCU's and HBUS' lawyers' questions under oath.

If you decide to participate in this action, you will not incur any costs at all during or after the litigation process. Nichols Kaster & Anderson will pay all costs from any monies it

recovers if the lawsuit is successful. Payment of these costs will reduce any monies, if any, ultimately paid to the class members.

If you do not join this action, you will not be bound by any ruling, judgment, award, or settlement, entered in this case, favorable or unfavorable. If you do not to join this action, you are free to take action on your own.

### **STATUTE OF LIMITATIONS**

The FLSA has a statute of limitations of two years which can be extended to three years under certain circumstances. If you choose to join this action and the Court finds in favor of the Plaintiffs, you may be able to recover back wages only during weeks you worked within either two or three years of the date you file your "Plaintiff Consent Form." If you choose not to join in this action, then you may file your own action. Be advised that the clock will still be running on your time limit for filing your own action, if you do not join this lawsuit.

### **NO RETALIATION PERMITTED**

The law prohibits retaliation against employees for exercising their rights under the FLSA. Therefore, HMCU and HBUS are prohibited from discharging you or retaliating against you in any other manner because you choose to participate in this action.

### **YOUR LEGAL REPRESENTATION IF YOU JOIN**

If you choose to join this case by filing a Plaintiff Consent Form, you will be agreeing to representation by Plaintiffs' Counsel:

**Nichols Kaster & Anderson, PLLP**

Donald H. Nichols, Paul J. Lukas, and Tim Selander  
4600 IDS Center, 80 South 8th Street  
Minneapolis, MN 55402

**Nichols Kaster & Anderson, LLP**

Bryan Schwartz and Matt Helland  
One Embarcadero Center, Suite 720  
San Francisco, CA 94111  
Toll Free Telephone: (877) 448-0492  
Facsimile: (612) 215-6870  
[www.nka.com](http://www.nka.com)

The Plaintiffs' attorneys are being paid on a contingency fee and/or statutory basis, which means that if there is no recovery, there will be no attorneys' fees. The specific terms and conditions of representation will be contained in a fee agreement entered into by Plaintiffs' attorneys and you.

**FURTHER INFORMATION**

Further information about this lawsuit or this notice can be obtained by contacting attorneys for Plaintiffs:

BRYAN SCHWARTZ  
NICHOLS KASTER & ANDERSON, LLP  
One Embarcadero Center, Suite 720  
San Francisco, CA 94111  
Telephone: (877) 448-0492  
Facsimile: (415) 421-1700  
Email: Schwartz@nka.com  
www.nka.com

You may also contact attorneys for Defendants:

MICHELLE BARRETT  
LITTLER MENDELSON, P.C.  
650 California Street, 20th Floor  
San Francisco, California 94108  
Telephone: 1 (888) 548-8537  
Facsimile: (415) 399-8490  
Email: MBarrett@littler.com  
www.littler.com

**YOU SHOULD NOT CONTACT THE COURT AT THIS TIME.**

**CONCLUSION**

**ATTORNEYS FOR PLAINTIFFS HAVE BEEN PERMITTED TO SEND THIS NOTICE BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, THE HONORABLE MAXINE CHESNEY, UNITED STATES DISTRICT COURT JUDGE.**

**THE COURT HAS MADE NO DECISION IN THIS CASE ABOUT THE MERITS OF PLAINTIFFS' CLAIMS OR OF DEFENDANTS HMCU'S OR HBUS' DEFENSES. IN ADDITION, THE COURT IS NOT ENCOURAGING INDIVIDUALS TO JOIN THIS LAWSUIT, NOR IS IT DISCOURAGING INDIVIDUALS FROM DOING SO.**

Donald H. Nichols, MN State Bar No. 78918  
(admitted pro hac vice)  
Paul J. Lukas, MN State Bar No. 22084X  
(admitted pro hac vice)  
Tim C. Selander, MN Bar No. 0387016  
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One Embarcadero Center, Suite 720  
San Francisco, California 94111

Attorneys for Plaintiffs and the Class

**CONSENT FORM AND DECLARATION  
UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA**

Case No. C 07-2446 MMC

I hereby consent to join the lawsuit against HSBC Mortgage Corporation (USA) ("HMCU") and HSBC Bank USA, NA ("HBUS") as a Plaintiff to assert claims against them for violations the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

I certify under the penalty of perjury that the following is true and correct: During the past three years, there were occasions where I worked over 40 hours per week for HMCU and HBUS and did not receive overtime compensation.

**I worked as (please check all that apply):**

- Sr. Retail Mort. Lending Consultant**
- Retail Mort. Lending Consultant**
- Premier Mortgage Sales Officer**
- Other Mortgage Sales Employee**

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Signature

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Date

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Print Name

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Address (with apartment number if applicable)

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Print Name

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City, State, Zip Code

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Best Phone Numbers

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E-Mail Address

---

Social Security Number

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Emergency Contact

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Location(s) Where I Worked